

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 208 OF 2023

*(Arising from the award of the Commission for Mediation & Arbitration of DSM at Kinondoni)
(B, Chacha: Arbitrator) Dated 14th November 2023 in Labour Dispute
No. CMA/DSM/KIN/136/2022/68/2022)*

THREE ROAD LIMITED.....APPLICANT

VERSUS

FARAJI BURHANI KOMBA.....RESPONDENT

JUDGEMENT

Date of last Order: 6th November 2023

Date of Judgement: 17/11/2023

OPIYO, J.

The applicant herein made this application praying for this court praying for this court to revise the award by the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/KIN/136/2022/68/2022 delivered on 14th November 2022. The application is preferred under Sections 91(1)(a)(b), (2)(a)(b)(c), (4)(a)(b) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 [CAP 366 RE 2019]. Also under Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(c)(d) and (2) of the Labour Court Rules, GN No. 106 of 2007.



Brief background of the matter as appreciated from the records and parties' pleadings are that, the respondent was employed by the applicant on 1st January 2021 as a Clearing and forwarding Department Manager under yearly fixed term contract. Sporadically in February 2022 it was alleged that the applicant breached the automatic renewable contract of one year. Aggrieved by the decision, respondent filed the matter to the Commission. At CMA the matter was decided on his favor by being awarded unpaid salary of February, leave allowance and 10 months compensation as a remained period to the tune of TZS 24,000,000/=. The applicant herein was aggrieved with the award, hence, this application.

Along with the Chamber summons, the applicant filed an affidavit sworn by Mr. Samuel Ntabaliba, applicant's Advocate with the facts challenging the decision of the arbitrator on the ground that the respondent's employment ended after his contract being expired. The legal grounds raised include the following:-

- i) Whether the employment contract can be automatically renewed without proof that he continued working after the contract being expired.



- ii) Whether the certificate of service issued after the contract has been expired is a proof of automatic renewal.
- iii) Whether the letter issued after the contract expired as notice amounts to automatic renewal.

The counter affidavit sworn by the respondent was filed in challenging the application. The application was disposed of by a way of written submissions. The Applicant was represented by Mr. Samuel Shadrack Ntabaliba, Advocate, whereas respondent was represented by Ms. Victoria Mgonja, Advocate.

Supporting the application as to whether there was an automatic renewal, Mr. Ntabaliba submitted the testimonies of the Respondent at CMA that, is that although he was not granted with the employment contract which ought to have commenced on 1st January, 2022 up to December, 2022, he assumed that by not giving him contract he would have automatically continued with employment by conduct or automatic renewal. But there is no any proof tendered by the respondent proving that in January and February, 2022 he was working at the applicant's office.



Mr. Ntabaliba insisted that, for the same to exist, there must be a proof being tendered that after the expiration of the first contract of employment, the employee continued working. According to him, failure to prove that, the principle of automatic renewal ceases to apply. He stated that, the only proof tendered is certificate of service issued in February 2022, but it does not prove that he was working from January to February 2022.

It was further submitted that, the employment contract which expired in December 2021 had a specific clause under Item 1.2 which stated that employment shall not be bound to notify the employee that his contract expired the contract shall come to an end on specific date.

That, from the above clause, he is of the view that, since the employment contract has a specific clause that contract shall expire on specific date, the Respondent could not have continued working without any further extension of employment contract.

In challenging the award of TSZ 24,000,000/= Mr. Ntabaliba said that it is too excessive to be awarded for the contract which did not exist to have been reached. He added that, this is unjustifiable award because

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the Respondent had no valid and legal employment contract. It was further added that, having no proof that after December, 2022 the respondent continued working with the Applicant, it was wrong for the Trial Arbitrator to award TZS 24,000,000/= as a terminal benefit for the breach of contract. He thus prayed for the CMA award to be revised.

Opposing the application Ms. Mgonja submitted that the Respondent's herein had a one-year fixed contract with the Applicant which was subject to renewal. According to her this is justified by the first contract which was signed on 1st January 2020 to 31st December 2020, the second contract was signed on 1st January 2021 to 31st December 2021, and the third contract was on 1st January 2022 and was terminated on 28th February 2022.

Ms. Mgonja submitted that the respondent's contract was renewed by default, this is because; he worked for the Applicant for the two months in the year 2022, that is, January and February and he was paid for the month of January only for which he clearly testified in his testimony. She stated that, the applicant produced a bank statement which was rejected by the Commission for Mediation and Arbitration for not being within the listed documents. She added that, at page 6 paragraph 2 of



the Award, DW1 testifying for the applicant she admitted after expiration of his contract, he was paid the salary of that month that he worked for with the certificate of services. She further stated that the complainant was not paid the salary of February 2022 when his contract was terminated. On such basis she of the view that, DW1 testimony corroborate with the testimony of PW1 that he was paid the salary of January 2022 but not salary of February 2022.

Ms. Mgonja submitted further that section 4(3) of the Employment and Labour Relations (Code of Good Practice) G.N. No.42 of 2007, provides circumstances under which a contract may be renewed by default. She argued that, the fact that the Respondent kept on working for the applicant and was even paid for the month of January the same salary that he has been paid in his previous contracts, proves that the respondent's contract was renewed by default.

It was further insisted by Ms. Mgonja that when examining exhibits including Exhibit A1 (certificate of services), A3 (notice of non-renewal) and A4 (Termination letter), the court will come to a finding that all these exhibits were issued in February 2022. Now the question is, if the contract had expired December 2021, why did the Applicant issue the

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respondent with the said exhibits in February 2022. According to her, the applicant is doing all that so as she can run away from her legal liability of paying the Respondent his dues as per the law. This is because she even went ahead into perjuring herself during cross examination by testifying that the complainant was not paid after December 2021, totally forgetting that she impliedly admitted to the Respondent being paid the salary of January 2022 and not of February 2022. Supporting her stand she cited the case of **I.O.T (Travelling Bags) vs. Thomas Soko and 2 Others**, Rev. No. 131/2015, High Court Labour Division, the court stated that;

"If the Applicant was to let the respondent to continue working for him even one day after the date of the end of contract that would be construed that the Respondent had reason to believe their contracts were to be renewed as used to be before."

In the scenario at hand, the applicant had let the respondent to work for him for two full months of the year 2022 before terminating his contract on the grounds of operational requirements, she submits. Regarding the challenged reliefs Ms. Mgonja submitted that, the principle of awarding remained period once there is a breach of contract is well established in



the case of **Good Samaritan v. Joseph Robert Savari Munthu**, Lab.

Revision No. 165 of 2011, where the court was of the view that:

"where an employer terminates a fixed term contract, the loss of the salary by the employee of the remaining period of the unexpired term is a direct foreseeable and reasonable consequence of the employer's wrongful action."

On that basis, she is of the view that, the arbitral award was fair and just by awarding the respondent the remaining months in his fixed term contract, the salary of February 2022 which even DW1 testified that he was never paid and the leave allowance which was never disputed thus making a total of 24 Million. She thus, prayed for this Court to dismiss the application.

In rejoinder, the applicant counsel substantially reiterated his submission in chief that I find no reason to repeat the same here.

Having considered parties' submissions and their sworn statements, I am inclined to deal with one major issue, as to whether the respondent contract was renewed as the center of debate.



Challenging the alleged automatic renewal, the applicant's Counsel alluded that there was no evidence admitted before CMA to justify renewal of employment contract. On the other side the respondent maintained that, since he continued to render service and enjoying remuneration of previous contract after the same being expired his contract was renewed by default. In resolving the contested question, the applicable provision is **Rule 4(3) of the Employment and Labour Relations (Code of Good Practice). G.N No. 42 of 2007**, which provides that: -

"Subject to sub rule (2), a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it"

The above provision draws a demarcation on how contract of fixed term may be renewed by default or not, basing on circumstances of each case. In this matter it is undisputed that the respondent was employed under yearly fixed term as per Exhibit A-2 (employment contract) ended on 31st December 2021. Also, not in dispute that in January 2022 he enjoyed remuneration of the same amount he used to be paid under previous contract. Although applicant tried to dispute this fact, but his



denial was not good enough for it led to the respondent's only proof by bank statement to be unjustly denied admission. This gives a room for the court to insinuate based on parties' dialogue. Therefore, although the bank statement was not admitted, this court is of the view that, the same had the answer to this question. So, by mere blocking its admission, the applicant did not successfully prove that the applicant was not paid the salary of January as he tried to persuade this court to hold. On that basis, it is my view that, he was paid leading to renewal by default.

The law mentioned some factors to be considered in establishing renewable contract in relation to employer-employee relationship as provided under **section 61 of the Labour Institutions Act**, which provides that: -

"Section 61. For the purpose of labour law, a person who works for or renders a service to other person, is presumed until the contrary is proved to be an employee regardless of the form of contract if any, one or more of the following factors is present: -

a) The manner in which the person works subject to the control or directions of another person.

b) The person hours of work are subject to the control or direction of another person.



- c) In the case of person who works for the organization, the persons form part of the organization.*
- d) The person has worked for that other person for an average of at least 45 hours per month over the last three months.*
- e) The person is economically dependent on the other person for which that person renders service.*
- f) The person is provided with tools of trade or works equipment by the other person.*
- g) The person only works or renders service to one person.'*

Again, in the case of **Musa Para v. Scanad Tanzania Ltd**, Revision No. 355 of 2017, High Court of Tanzania, at Dar es salaam, (unreported) it was held that one cannot enjoy remuneration for the work not done. Basing on the above authorities, since the applicant enjoyed a salary of January 2022 while the previous contract had already expired, he was paid for continuing working to earn the salary. This is also justified by Exhibit A3 (notice of non-renewal) which was issued 1st February 2022 while the employment contract ought to have ended on 31st December 2021. Further to that, the applicant's intention of ending contract is also justified by Exhibit A4 (termination letter) issued on 28th February 2022. She was aware the contract was renewed automatically.



It is a principle of law that, for an employer-employee relationship to be established, the above-mentioned factors should not be considered in isolation. In this application, the evidence tendered at CMA qualify to establish employer employee relationship for an automatic renewal to exist. Therefore, applicant's allegation that there was no proof that respondent continued to work hold no water.

Having found that, I agree with respondent's Counsel by citing the case of ***Thomas Soko's Case(supra)*** as the applicant let the respondent to continue working for him after expiry of the previous contract to the extent of paying him salary for the month of January 2022, he invited default renewal, he is estopped from denying it later on. The notice of non-renewal could have legal stance to communicate the usual intended message if it was issued before the ending of the contract.

Based on the above, in the upshot, it is my finding that the contract that was renewed by default was cut short procedurally as the reasons according to the notice was operational requirement. The major issue as to whether the applicant has adduced sufficient grounds for this Court to exercise its revisional power is answered in the affirmative.



I therefore I find no need to quash and set aside the CMA award as the respondent's contract was renewable after being expired. Instead it is slightly varied in relation to 2,000,000 awarded for leave as there was no sufficient proof as whether there was any unpaid annual leave at the time of termination. The leave allowance is only awarded if there is sufficient proof that there was a previous leave that was not paid for. This has the effect of reducing total amount awarded by CMA to from 24,000, 000/ to 22,000,000/= In the circumstances, I hereby vary the CMA award to the extent explained only. I give no order as to the cost of the suit.

It is so ordered.



M. P. OPIYO,

JUDGE

17/11/2023